Pantelis Michalopoulos
202 429 6494
pmichalo@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe
STEPTOE & JOHNSON LLP

June 12, 2013

FILED IN ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: IB Docket No. 12-343; Sprint Nextel Corp. and SoftBank Corp., Joint Application for Consent to Transfer International and Domestic Authority

Dear Ms. Dortch:

DISH Network Corporation ("DISH") files this letter in response to the announcement that Sprint Nextel Corporation ("Sprint") and SoftBank Corporation ("SoftBank" and together with Sprint, the "Applicants") have amended their merger agreement. The amendment, as reported by the Applicants, significantly changes the proposal that the Commission has been evaluating. Among other things, it reduces from $8 billion to $5 billion the capital infusion into Sprint that the Applicants have touted as one of the transaction's two main benefits.[1] The amendment also introduces a poison pill defense that could inhibit both potentially superior offers and any substantial U.S. ownership of Sprint shares in the future.[2] The new agreement therefore requires a revised application, a new Public Notice, and an updated public interest analysis.[3]

One of the two primary public interest benefits cited by SoftBank—accelerated and expanded wireless broadband deployment—was presented by the Applicants as flowing directly

---

[1] Sprint Nextel Corp., Current Report (Form 8-K) (June 11, 2013); *see also* Letter from Sprint Nextel Corp., SoftBank Corp., Starburst I, Inc., Starburst II, Inc., and Starburst III, Inc. to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (June 11, 2013) ("Applicants' Letter").

[2] *Id.*

[3] *See* 47 C.F.R. § 1.927(h) (requiring a new public notice period for major amendments). Should the Commission disagree, however, at minimum the Commission and interested parties should have a reasonable time period to consider and comment on the major changes.

from the $8 billion capital infusion into Sprint. Here is how SoftBank ties the two together in the introduction to the application:

> SoftBank's $20.1 billion investment includes a direct infusion in Sprint of $8 billion in new capital, allowing Sprint to strengthen its balance sheet and lower its borrowing costs. This stronger financial foundation can enable Sprint to increase its network investment, accelerate its broadband deployment across multiple spectrum bands, and improve its coverage. Sprint anticipates taking advantage of its strengthened financial position by offering a wider range of devices and services to consumers. Sprint also anticipates taking advantage of other market opportunities to enhance its ability to provide superior service to its customers. The transaction thus promises to increase the speed, coverage, reliability, and capabilities of Sprint's wireless broadband network and offer consumers a more competitive choice in the broadband world.[4]

In their own words, then, SoftBank and Sprint asked the Commission to find that SoftBank's acquisition of Sprint would serve the public interest due, in substantial part, to the size of this capital infusion into this country's third largest wireless service provider. Indeed, when the New Jersey Rate Counsel questioned SoftBank's commitment to this infusion, SoftBank responded that it "is a firm commitment," that it had already provided $3.1 billion to Sprint, and that "SoftBank is contractually committed to provide the remaining $4.9 billion" when the transaction closes.[5]

SoftBank has now gone back on its promise. Under the terms of the amended merger agreement, $3 billion of the $8 billion—almost 40% of the promised capital infusion— will not be available to Sprint for network investment or broadband deployment after all.[6] And yet the Applicants have asserted that their "public interest demonstration is unaffected" by the amendment.[7] The only explanation that can be found for this conclusory statement is a cryptic snippet from their news release: "[T]he reallocation of primary capital to Sprint stockholders is warranted given the companies' refined operating and capital expenditures synergy expectations."[8]

---

[4] Sprint Nextel Corp. and SoftBank Corp., IB Docket No. 12-343, Public Interest Statement, at i (Nov. 15, 2012).

[5] Sprint Nextel Corp. and SoftBank Corp., IB Docket No. 12-343, Joint Opposition to Petitions to Deny, at 11 (Feb. 12, 2013).

[6] Sprint Nextel Corp., Current Report (Form 8-K) (June 11, 2013).

[7] *See* Applicants' Letter at 1.

[8] *Id.* at Attachment EX-99.1, at 1 (June 11, 2013).

To allow a reduction of the infusion from $8 billion to $5 billion, the "refining" to which the applicants flippantly refer must have been quite radical. Are the Applicants intimating that they have now realized that it will cost $5 billion to make the same investments (broadband network buildout and the like) that they had initially reckoned would cost $8 billion? The Applicants owe the Commission and the public a new public interest analysis, as well as an explanation if they, in fact, maintain that the benefits of the transaction have not diminished, notwithstanding this investment reduction.

These questions are compounded by SoftBank's insistence that Sprint adopt a "stockholder rights plan."[9] Such agreements are commonly referred to as "poison pills" because they are designed to inhibit any third party from acquiring a sufficient proportion of a company's equity interests on the open market to challenge for control of the company. Here, Sprint must adopt such a plan by June 17, 2013, one day *prior* to Sprint's deadline for considering the relative merits of a competing proposal from DISH for control of Sprint. Surprisingly, the Applicant's letter to the Commission explaining the amendment fails to describe or even discuss the stockholder rights plan. The plan is clearly intended to derail competing offers for Sprint, no matter the relative merits of the offer. In addition, if the proposed transaction is consummated, the plan could inhibit any significant influence over Sprint by anyone other than SoftBank. This means that the Applicants propose that the Commission approve not only foreign ownership of Sprint, but a control structure that would inhibit substantial U.S. ownership of Sprint shares in the future.

It is incumbent on SoftBank and Sprint to address the expected benefits of the transaction in light of the substantial reduction in the expected capital infusion. SoftBank also needs to explain why the Commission should allow Sprint to pass into SoftBank's hands when SoftBank has taken steps to inhibit substantial U.S. ownership of Sprint in the future. Such major changes to the proposal before the Commission call for an amendment to the application and a fresh Public Notice and review period.

Please contact the undersigned if you have any questions.

Sincerely,

/s/
Pantelis Michalopoulos
Counsel for DISH Network Corporation

[9] *See id.*